

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-36177 GFK 7

Busse Construction, Inc.,

Debtor.

NOTICE OF HEARING, MOTION
FOR EXPEDITED HEARING AND
MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

TO: Parties in interest pursuant to LOCAL RULE 9013-3; see attached service list.

1. State Bank of Belle Plaine (the “Bank”), by and through its undersigned counsel, moves the court for the relief requested below and gives notice of hearing.

2. A hearing on this motion will be held before the Honorable Gregory F. Kishel, Courtroom 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, at **1:15 p.m. on October 27, 2004**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered as soon as possible, but in any case prior to the scheduled hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005, and LOCAL RULE 1070-1. The proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on October 21, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and FED. R. BANKR. P. 4001. This motion is filed under FED. R. BANKR. P. 9014 and LOCAL RULES 9006-1 and 9013-1 to 9013-3. Movant requests hearing on an expedited basis and relief from the automatic stay.

6. **Expedited Relief.** Expedited relief is available, for cause, pursuant to FED. R. BANKR. P. 9006(c) and LOCAL RULE 9006-1(d). In this case, on information and belief, Debtor’s insurance has

lapsed or will lapse imminently¹ and the Trustee has no resources with which to extend insurance coverage or otherwise protect the Debtor's assets from peril. Furthermore, the Debtor's assets, and the Bank's collateral, are valuable, movable, and only minimally secured.

7. **The Bank's Claim.** The Debtor is indebted to the Bank as evidenced by a promissory note dated August 15, 2004 in the original amount of \$613,265.35 (Loan No. 47828).² The Debtor owed the Bank \$618,171.47 as of the October 21 Petition Date. To secure such indebtedness, the Debtor granted the Bank a security interest in all of its assets, including accounts and equipment, by way of a security agreement dated April 24, 2004.³ The Bank holds a duly perfected, first-priority security interest in accounts and equipment by virtue of its UCC-1 financing statement filed with the Minnesota Secretary of State on January 25, 1984 (Doc. No. 725797).⁴

8. **Substantive Relief — Cause.** Under § 362(d)(1), relief is appropriate for cause, such as lack of adequate protection. In this case, the subject property is comprised primarily of heavy equipment and accounts. With regard to the equipment, much of it may be stored out of doors and in locations where it may be subject to loss if unattended for a significant period. Further, the equipment is subject to depreciation due to its age and seasonal utility. With regard to accounts, the risk of depreciation is particularly acute when the collateral is accounts receivable. See *In re Value Recreation, Inc.*, 228 BR. 692, 698 (Bankr. D. Minn. 1999) (“These are highly fluid current assets. . . . The nature, amount, and value of accounts receivable can . . . quickly erode.”) The Bank is not being compensated for this depreciation and risk of loss. See *In re Food Barn Stores, Inc.*, 159 B.R. 264, 267 (Bankr. W.D. Mo. 1993)(interpreting “cause” in the context of § 362(d)(1) to mean “any

¹ A true and correct copy of the Notice of Cancellation is attached as Exhibit A.

² A true and correct copy of the promissory note is attached as Exhibit B.

³ A true and correct copy of the security agreement is attached as Exhibit C.

⁴ A true and correct copy of the initial UCC-1 financing statement is attached as Exhibit D. Doc. No. 725797 has been continued from time to time and amended to release specified items.

reason whereby a creditor is receiving less than his bargain from a debtor and is without remedy because of the bankruptcy proceeding”); *United Savings Assn. of Texas v. Timbers of Inwood Associates, Ltd.*, 484 U.S. 365 (1988)(discussing lack of compensation for depreciation as an element of lack of adequate protection). Cause exists for relief under 11 U.S.C. § 362(d)(1).

9. Substantive Relief — Lack of Equity and not Essential to Reorganization. Under § 362(d)(2), relief is appropriate where the Debtor lacks equity in the property and the property is not necessary for an effective reorganization. This being a chapter 7 case, no reorganization is in prospect. Regarding equity in the property, according to an equipment appraisal from March 2004, the subset of the equipment in which the Bank’s lien is clearly first priority was valued at \$492,500 (book value; liquidation value is likely substantially less), whereas the Bank now asserts a claim of approximately \$618,000. On information and belief, there is other “light” equipment, accounts, and other collateral subject to the Bank’s lien, but the value of the same is believed to be minimal. Therefore, the Debtor lacks equity in the subject property, and relief is appropriate under 11 U.S.C. § 362(d)(2).

10. Under to 11 U.S.C. § 362(g), the burden is on the Debtor to prove the absence of cause or the existence of adequate protection.

11. At this time, the Bank does not anticipate calling for testimony as to any facts relevant to this motion. However, the Bank reserves its right to call witnesses for such purpose, if necessary.

12. The Bank asserts that the relevant legal authorities are set forth herein and the requirement of a separate memorandum, if applicable, is satisfied hereby.

Wherefore, the Bank moves the Court for an order terminating the automatic stay with respect to the Bank’s interest in the Collateral, and for such other relief as may be just and equitable.

Dated: October 22, 2004

STEIN & MOORE, P.A.

/s/ Eric J. Sherburne

Peter B. Stein, #104917

Eric J. Sherburne, #279389

Attorneys for Movant

332 Minnesota St., Ste. W-1650

St. Paul, MN 55101

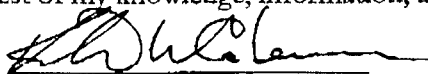
651-224-9683

651-223-5212 fax

VERIFICATION

I, Richard W. Coleman, an Officer of State Bank of Belle Plaine, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: October 22, 2004



Richard W. Coleman

NOTICE OF CANCELLATION
OF COMM CWP POLICYTHIS CANCELLATION NOTICE IS ISSUED BY -
WESTFIELD INSURANCE COMPANY

ISSUED AT WESTFIELD CENTER, OHIO 44251-5001

**WESTFIELD
INSURANCE**

A member of Westfield Group™

TO:
STATE BANK OF BELLE PLAIN
201 W MAIN ST
BELLE PLAINE MN 56011ISSUED TO:
BUSSE CONSTRUCTION, INC.
13001 BELLE PL TR
BELLE PLAINE MN 56011POLICY NUMBER: CWP3601687
AMOUNT DUE: \$3,753.33POLICY EFFECTIVE DATE: 10/21/2003
ORIGINAL DUE DATE: 09/21/2004

Because you are a valued customer, we are concerned. Our records indicate that we have not received payment for coverage already provided. As a result, your policy will be cancelled at 12:01 a.m. on 10/29/2004 if payment is not received on or before that date.

In order to continue coverage, please forward payment to Westfield Group, P.O. Box 9001566, Louisville, KY 40290-1566. Payment must be received before 10/29/2004. Please note your account number on your check or money order.

If you feel you have received this letter in error, or if you obtained coverage elsewhere, it is important that you contact your independent insurance agent or our billing customer service department at 1-800-552-9134 to assure proper coverage and/or cancellation. Cancellation for non-payment may result in payment due to Westfield Group.

Reason For Cancellation - Non-payment of premium when due

If this policy provides automobile insurance, the notice is given pursuant to Minn.Stat.65B.14-65B.21.

If this policy provides Automobile or Property Insurance, and if you think this cancellation is in violation of Minnesota law, you may send a written letter of complaint to the Commissioner of Commerce at 85 7th Place, Suite 500, St. Paul, MN, 55101, within 30 days of receiving this notice.

You may be eligible to obtain insurance through the Minnesota Automobile Insurance Plan or the Minnesota Fair Plan. These plans are pooling arrangements of all companies providing auto or property insurance in the state, from which plan each company must take its share of applicants. Your agent can provide the information and assistance you need.

R. L. West

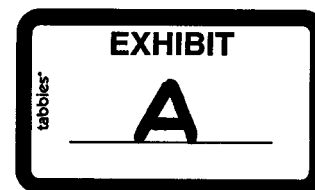
R. L. WEST

AUTHORIZED REPRESENTATIVE
DATE OF THIS NOTICE 10/13/04

ACCOUNT # 2200619569

CAPESIUS AGENCY, INC
P.O. BOX 97
SHAKOPEE MN 55379-0097

2206427



BUSSE CONSTRUCTION INC 13001 BELLE PLAINE TRL BELLE PLAINE, MN 56011	STATE BANK OF BELLE PLAINE 201 WEST MAIN ST, P.O. BOX 87 BELLE PLAINE, MN 56011	RWC/68 Loan Number <u>47828</u> Date <u>08-15-2004</u> Maturity Date <u>04-01-2005</u> Loan Amount \$ <u>613,265.35</u> Renewal Of <u>47489, 39897, 44982, 4899</u> SSN/TNN <u>41-0870234</u>
BORROWER'S NAME AND ADDRESS "I", "me" and "my" means each borrower above, together and separately.	LENDER'S NAME AND ADDRESS "You" and "your" means the lender, its successors and assigns.	

I promise to pay you, at your address listed above, the **PRINCIPAL** sum of SIX HUNDRED THIRTEEN THOUSAND TWO HUNDRED SIXTY FIVE AND 35/100
 Dollars \$ 813,285.35

- ☒ **Single Advance:** I will receive all of the loan amount on 09-15-2004. There will be no additional advances under this note.
- ☐ **Multiple Advance:** The loan amount shown above is the maximum amount I can borrow under this note. On _____
 I will receive \$ _____ and future principal advances are permitted.
- Conditions:** The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount more than one time. All other conditions of this note apply to this feature. This feature expires on _____.

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 09-15-2004 at the rate of 8.000 % per year until 04-01-2005.

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____
 A change in the interest rate will take effect _____.

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.
 The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐

ACCRUAL METHOD: You will calculate interest on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____.

☐ **LATE CHARGE:** If I make a payment more than _____ days after it is due, I agree to pay a late charge of _____.

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____.

☐ **Authority:** The interest rate and other charges for this loan are authorized by _____.

PAYMENTS: I agree to pay this note as follows:

ON DEMAND, BUT IF NO DEMAND IS MADE THEN 1 MONTHLY PAYMENT OF \$25,000.00 ON 09-30-2004 AND 1 MONTHLY PAYMENT OF \$50,000.00 ON 10-31-2004 AND 4 MONTHLY PAYMENTS OF \$8,000.00 BEGINNING 12-01-2004 AND 1 PAYMENT OF \$630,176.29 ON 04-01-2005.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): SECURITY AGREEMENT DATED APRIL 28, 2004,
PERSONAL GUARANTEES GENE MOSKOP, JOHN BUSSE, PATRICK BRAZIL
DATED SEPTEMBER 15, 2004.

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

Richard W. Coleman
 RICHARD W. COLEMAN, ASST VICE PRESIDENT

PURPOSE: The purpose of this loan is REFINANCE CURRENT NOTES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2. I have received a copy on today's date.

BUSSE CONSTRUCTION INC

PATRICK J. BRAZIL, PRESIDENT

EXHIBIT

B

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against one of my accounts. I will assume the liability and relieve you of all responsibility for any such claim that occurs if you set off this debt against one of my accounts.

change in my address, I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address you give me.

ExpediaTM © 1984, 1991 Bankers Systems, Inc., Rt. Cloud, MN Form UN-MN 3/7/2002

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
BUSSE CONSTRUCTION INC 13001 BELLE PLAINE TRI. BELLE PLAINE, MN 56011	STATE BANK OF BELLE PLAINE 201 WEST MAIN ST, P.O. BOX 87 BELLE PLAINE, MN 56011
41-0970234	41-0556650
Type: <input type="checkbox"/> individual <input type="checkbox"/> partnership <input checked="" type="checkbox"/> corporation _____ State of organization/registration (if applicable) <u>MN</u> <input type="checkbox"/> If checked, refer to addendum for additional Debtors and signatures.	

COMMERCIAL SECURITY AGREEMENT

The date of this Commercial Security Agreement (Agreement) is 04-26-2004

SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ _____ (Borrower) owes to Secured Party:

☐ **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

☒ **All Debts.** All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

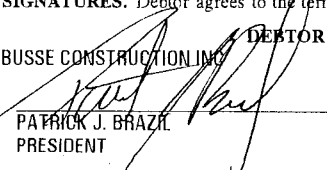
SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

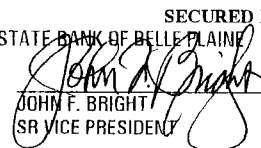
PROPERTY DESCRIPTION. The Property is described as follows:

- ☒ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- ☒ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- ☒ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- ☒ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☒ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- ☒ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- ☒ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☒ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity accounts, and financial assets.
- ☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☐ **Specific Property Description:** The Property includes, but is not limited by, the following (if required, provide real estate description):

USE OF PROPERTY. The Property will be used for ☐ personal ☒ business ☐ agricultural ☐ _____ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.

DEBTOR
 BUSSE CONSTRUCTION INC

 PATRICK J. BRAZILL
 PRESIDENT

SECURED PARTY
 STATE BANK OF BELLE PLAINE

 JOHN F. BRIGHT
 SR VICE PRESIDENT



GENERAL PROVISIONS. Each Debtor's obligations under this Agreement are independent of the obligation of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

APPLICABLE LAW. This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION. Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

WARRANTIES AND REPRESENTATIONS. Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY. Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will be in default if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, further explained in 7 CFR Part 1940, Subpart G, Exhibit M. If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST. Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE. Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM. Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement.

If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property.

Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST. If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT. Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

REMEDIES. After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER. Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS. Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

This STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code.

Debtor(s) (Last Name First) and address(es)

State Construction, Inc.
13061 Belle Plaine Trail
Belle Plaine, MN. 56011

Secured Party(ies) and address(es)

STATE BANK
OF BELLE PLAINE
Belle Plaine, Minn. 56011

For
Filing
Officer

725737

1. This financing statement covers the following type(s) (or items) of property:

**All equipment, whether now owned or hereafter acquired,
accounts receivable, contract rights and other rights to
payment.**

Assignee(s) of Secured Party

2. ☐ Products of Collateral are also covered:

3. ☐ The described crops are growing
or to be grown on: *

4. ☐ This statement covers timber to be cut,
minerals or the like, accounts subject to
Minn. Stat 336.9-103, Subd 5 or this is a
fixture filing. *
* If checked, see item 4 on reverse side.

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer pursuant to the Uniform Commercial Code.
The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.
(Note: Fee for filing this page as termination statement is \$1.00, plus \$1.00 for each additional name more than one required to be indexed.)

Date 19

By (Signature of Secured Party or Assignee of Record. Must be signed)

Filing Officer is requested to note file number, date and hour of filing on this copy and
return to the person filing, as an acknowledgment.

(3) Filing Officer Copy - Acknowledgment

EXHIBIT

D

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-36177 GFK 7

Busse Construction, Inc,

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Debtor.

The undersigned, an employee STEIN & MOORE, P.A., declares that on October 22, 2004, he served the following:

1. Notice of Hearing and Motion for Relief from the Automatic Stay;
2. Proposed order, and
3. Unsworn Declaration for Proof of Service

on each of the entities named below, by U.S. mail (unless otherwise indicated) by mailing to each of them a copy thereof by enclosing the same in an envelope with first class postage prepaid and depositing the same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

John Hedback, Trustee
2855 Anthony Ln. S., Ste. 201
St. Anthony, MN 55418-3265
Facsimile 612-789-2109

Steven Kluz, Sr.
Rider Bennett LLP
333 South Seventh St., Ste 2000
Minneapolis, MN 55402
Facsimile 612-340-7900

U.S. Trustee
300 S. Fourth St., Ste. 1015
Minneapolis, MN 55415
Facsimile 612-664-5516

Busse Construction, Inc.
13001 Belle Plaine Trl.
Belle Plaine, MN 56011
Facsimile 952-873-2070

The CIT Group/Equipment Financing
PO Box 27248
Tempe, AZ 85285-7248
Facsimile 800-362-1766

Ziegler, Inc.
901 W. 94th St.
Minneapolis, MN 55420
Facsimile 952-887-5820

Volvo Commercial Finance LLC
7823 National Service Rd.
Greensboro, NC 27409
Facsimile 336-931-3773

Case Credit Corp.
PO Box 292
Racine, WI 53401-0292
Facsimile 262-636-5590

Associates Commercial Corp.
1701 Golf Rd., #1108
Rolling Meadows, IL 60008
Facsimile 312-627-3590

Associated Bank
401 E. Kilbourn Ave.
Milwaukee, WI 53202-3212
Facsimile 414-283-2204

Deere Credit, Inc
6400 86th St. NW
PO Box 6600
Johnston, IA 50131-6600
Facsimile 515-267-3000

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 22, 2004

/e/ Eric J. Sherburne

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-36177 GFK 7

Busse Construction, Inc.,

ORDER
FOR RELIEF FROM
THE AUTOMATIC STAY

Debtor.

At St. Paul, Minnesota this 27th day of October, 2004.

This matter came before the Court on a motion by State Bank of Belle Plaine for an order for relief from the automatic stay. Appearances were noted on the record. Based on the motion, file, records, and proceedings herein,

IT IS ORDERED:

1. Under the circumstances, sufficient notice was given and expedited relief is appropriate.
2. State Bank of Belle Plaine is granted relief from the automatic stay of 11 U.S.C. § 362 with respect to property described as follows:

**All business assets of Busse Construction, Inc.,
including accounts and equipment.**

The automatic stay is terminated as to the Bank with respect to such property.

3. Notwithstanding FED. R. BANKR. P. 4001(a)(3), this Order is effective immediately.

Honorable Gregory F. Kishel
United States Bankruptcy Judge